IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.A.ABDUL GAFOOR
&
THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

FRIDAY, THE 12TH JANUARY 2007 / 22ND PAUSHA 1928

RCRev..No. 14 of 2007

RCA.18/2004 of I ADDL. DISTRICT COURT(RENT CONTROL APPELLATE AUTHORITY), KOLLAM

RCP.2/2002 of THE RENT CONTROLLER (MUNSIFF), PUNALUR
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REVISION PETITIONER/APPELLANT/COUNTER PETITIONER

JACOB THOMAS, PUTHEN VEETTIL,
SHYNI BHAVAN, PATHANAPURAM.

BY ADV. SRI.B.S.SWATHY KUMAR
SRI.BINDU SREEKUMAR
SRI.K.G.RENGANATH

RESPONDENTS: RESPONDENT/PETITIONER

UNNONNY,S/O.MATHAI,
PANDIYAZHIKATHU PUTHEN VEEDU,
MANJAKKALA P.O., NADUTHERI MURI,
THALAVOOR VILLAGE.

BY

THIS RENT CONTROL REVISION HAVING COME UP FOR ADMISSION ON 12/01/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.A.ABDUL GAFOOR &

K.R. UDAYABHANU, JJ.

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R.C.R.NO. 14 OF 2007

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DATED THIS THE 12th DAY OF JANUARY 2007

ORDER

Udayabhanu,J.

The revision petitioner is the tenant under orders of eviction as found by the courts below concurrently with respect to the grounds under Sections 11(2)(b) and 11(3)of the Kerala Buildings (Lease & Rent Control)Act, 1965 [Act 2 of 1965] {for short 'the Act'}. It is the case of the petitioner/landlord that he wanted to shift his jewellery business which is conducted in a tenanted premises adjacent to the petition schedule premises and that for the very purpose he had purchased the same in the year 2001. The case of the revision petitioner/tenant is that the rent as claimed, i.e. at the rate of Rs.3,000/- is a false case and to the prior landlord he had surrendered 2/3rd of the portion of the tenanted premises and the rent was proportionately reduced to Rs.1000/- . Hence, according to him, he has to pay the rent only at the rate of

Rs.1000/-. It is his case that bona fide need set up is without any basis. He has contended that in a portion of the building purchased by the landlord, his wife has started a margin free shop which the landlord could have utilised for shifting the jewellery shop, if he ever wanted to. Both the courts below on a detailed and meticulous consideration of the evidence adduced in the matter have declined to uphold the contention of the revision petitioner/tenant.

2. On a consideration of the judgments of the courts below, we find no scope at all for interference. So far as the contention of the tenant for the protection of the second proviso to Section 11(3) of the Act, the courts have found that he is not entitled for the same. It was brought out that he is a retired Headmaster getting of Rs.6,000/- per month as pension and his daughter is settled in America. It was also noted that the revision petitioner is an income-tax payee. No documents were produced to establish that as to the details of the income received from his retail outlet of ayurvedic medicines. So far as the second limb is concerned, PW1,the landlord has testified that a number of shopping complexes have been constructed in the locality. The above version was not disputed in the cross

examination. The version of RW1, the tenant is that he will have to pay deposit and high rate of rent, if he is to take on lease rooms from any of the shopping complexes. Evidently, he has not made a proper enquiry in this regard. The burden is on the tenant to establish both limbs of the second proviso to Section 11(3) of the Act. He has failed to discharge the same. In the circumstances, we see no reason to admit the revision petition. It is dismissed in limine.

SD/-

K.A.ABDUL GAFOOR
JUDGE

SD/-
K.R.UDAYABHANU,
JUDGE

ks. **TRUE COPY**

P.S.TO JUDGE